

REMARKS

Applicant appreciates the time taken by the Examiner to review Applicant's present application. This application has been carefully reviewed in light of the Official Action mailed October 11, 2006. This Reply encompasses a bona fide attempt to overcome the rejections raised by the Examiner and presents amendments as well as reasons why Applicant believes that the claimed invention, as amended, is novel and unobvious over the applied prior art. Accordingly, Applicant respectfully requests reconsideration and favorable action in this case.

References Submitted for Consideration

Applicant appreciates the time the Examiner has taken to initial the references listed on the PTO/SB/08A forms submitted with separate Information Disclosure Statements on January 5, 2004 and March 30, 2005, respectively.

However, Applicant notes that the Office Action was not accompanied by a copy of the listing of references on the PTO/SB/08A submitted with the Information Disclosure Statement (IDS) filed January 21, 2005.

Applicant hereby encloses a copy of that IDS (with PTO/SB/08A) as filed on January 21, 2005, with this reply for review and consideration by the Examiner. Applicant respectfully requests the Examiner indicate the references cited therein have been considered by initialing the PTO/SB/08A.

Rejections under 35 U.S.C. § 112

Claims 59, and 62-63 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, as to claim 59, the examiner deemed the word “or” at line 1 a relative term that renders the claim indefinite. Applicant respectfully disagrees. Alternative expressions using “or” are acceptable, such as “wherein R is A, B, C, or D.” The following phrases were each held to be acceptable and not in violation of 35 U.S.C. 112, second paragraph in *In re Gaubert*, 524 F.2d 1222, 187 USPQ 664 (CCPA 1975): “made entirely or in part of”; “at least one piece”; and “iron, steel or any other magnetic material.” See MPEP 2173.05(h)(II). In this case, claim 58 recites, *inter alia*, “polling the cached asset with a frequency dependent on the relative activity of the cached asset.” Claim 59 further particularly points out and distinctively claims this dependency (i.e., the frequency increases or decreases depending upon whether the relative activity of the cached asset increases or decreases). To forward the prosecution and place the application in a condition for allowance, claim 59 is amended herein to rephrase the polling frequency’s dependency on the activity of the cached asset (i.e., “wherein the frequency increases as the relative activity of the cached asset increases and wherein the frequency decreases as the relative activity of the cached asset decreases”). Claims 62 and 63 are amended herein to correctly refer to the method of claim 61. Accordingly, withdrawal of this rejection is respectfully requested.

Rejections under 35 U.S.C. § 102

Claims 46-51, 58-63, 70-77, 86-91 and 98-105 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,742,059 ("Todd"). Applicant respectfully traverses this rejection.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

"The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

When evaluating the scope of a claim, every limitation in the claim must be considered. Office personnel may not dissect a claimed invention into discrete elements and then evaluate the elements in isolation. Instead, the claim as a whole must be considered. See, e.g., *Diamond v. Diehr*, 450 U.S. at 188-89, 209 USPQ at 9 ("In determining the eligibility of respondents' claimed process for patent protection under 101, their claims must be considered as a whole. It is inappropriate to dissect the claims into old and new elements and then to ignore the presence of the old elements in the analysis. This is particularly true in a process claim because a new combination of steps in a process may be patentable even though all the constituents of the combination were well known and in common use before the combination was made.").

Todd is hereby distinguished from Claims 46-51, 58-63, 70-77, 86-91 and 98-105, particularly independent Claims 46, 58, 70, 86, and 98, under 35 U.S.C. §102(e) at least because Todd neither expressly nor inherently describes a method and a computer program product embodying the method of managing a cache. In particular, Todd neither expressly nor inherently describes a method and a computer program product embodying the method of managing cached digital assets (e.g., images, videos, audio files, documents, source code, compiled files and so on in distributed or non-distributed systems) in as complete detail as is contained in Claims 46-51, 58-63, 70-77, 86-91 and 98-105.

Todd appears to be directed to management software for remotely controlling one or more peripherals [col. 1, lines 9-12]. Specifically, Todd describes a disk array that is being managed remotely by a client computer, which sends a request for disk drive state changes

over a network to a server which is running server agent software [col. 5, lines 4-7]. The server agent software responds to the request from the client for update information about the disk array in a manner that is permitted by a client-controlled timestamp throttle [col. 5, lines 35-37; col. 6, lines 4-6]. Specifically, to requests made at appropriately-paced time intervals (also referred to as the “secondary requests”), the server agent software checks the current state of the connection to the disk array and responds with new and updated information about the disk array [col. 5, lines 38-40; Fig. 6; col. 9, lines 44-46]. To “too-frequent” requests (also referred to as the “primary requests”), the server agent software does not perform this check but simply searches its cache and responds with cached information about the disk array [col. 5, lines 40-44; Fig. 6; col. 9, lines 29-34]. The server agent software does not appear to cache anything other than the connection state information on the disk array that it monitors.

According to Todd, each category of array information is embodied as a software object [col. 5, lines 44-45]. In the case of controlling/managing a disk array, the state of the disk array is reflected in the information contained in a set of software objects stored in the server agent’s cache memory [col. 5, lines 48-51]. Each software object in the set has an associated timestamp which describes when that particular object was last updated with information about the array [col. 5, lines 51-53]. When the server agent software receives an incoming software object (e.g., a “request for changes” object), it compares the incoming object’s timestamp against each separate timestamp associated respectively with each one of the software objects in the server agent’s cache [col. 5, lines 54-60]. This comparison is done on an object-by-object basis until all of the objects in the set are polled or compared to permit a determination of which objects in the set have changed [col. 5, lines 63-67]. In Todd, it appears that the server agent’s cache is utilized to prevent overzealous reporting back on the state of the disk array connected thereto; however, the server agent’s cache itself is not managed or otherwise optimized by the server agent software. This is supported by the explicit teaching of Todd, “the algorithm that a particular server agent executes upon receiving a request for changes” “does not specify how nor how often the cache gets updated.” [col. 9, lines 14-15 and 34-35].

Specifically, Todd’s management software does not manage a cache or poll a cached asset at different frequencies depending upon the relative activity of the cached asset. This is in sharp contrast to the embodiments of the invention as claimed in Claims 46-51, 58-63, 70-77, 86-91 and 98-105. As an example, Claim 46 particularly recites, among others, “polling a cached asset according to a first schedule to determine if said cached asset has been active

within a first period of time.” As discussed above, the cited column 5, lines 54-67, of Todd neither expressly nor inherently suggests “polling a cached asset according to a first schedule,” as the examiner has alleged. In Todd, the polling of the cached software objects does not appear to be associated with any schedules. Rather, the polling of then cached software objects is done when a new object is received [col. 5, line 54]. That is, the frequency of polling a cached software object is not dependent upon the relative activity of that cached software object.

What is more, Todd neither expressly nor inherently describes “if said cached asset has not been active within said first period of time; assigning said cached asset a new status; and polling said cached asset according to a second schedule corresponding to the new status to determine if said cached asset has been active within a second period of time,” as recited in Claim 46. On the contrary, Todd does not specify how nor how often the cache gets updated [col. 9, lines 34-35]. It seems that, in Todd, the server agent’s cache may get refreshed or updated in many ways without affecting the server agent’s work [col. 9, lines 35-46]. Unlike embodiments of the invention as recited in Claim 46, it does not appear that any cached software object first polled by Todd’s server agent software is *assigned* a new status and polled again according to a second schedule corresponding to the new status.

As Claims 47-51, 58-63, 70-77, 86-91 and 98-105 contain limitations similar to those recited in Claim 46, Applicant respectfully submits that the above arguments apply equally well to these claims.

In summary, Todd is concerned with how to respond to a client request, regardless of how or how often the server agent’s cache gets updated [col. 9, lines 40-46]. In other words, cache management is not germane to Todd. In view of the foregoing, Applicant respectfully submits that embodiments of the invention as set forth in Claims 46-51, 58-63, 70-77, 86-91 and 98-105 are not whatsoever anticipated by Todd. Accordingly, withdrawal of this rejection is respectfully requested.

Rejections under 35 U.S.C. § 103

Claims 52-57, 64-69, 78-85, 92-97, and 106-113 were rejected under 35 U.S.C. § 103(c) as being unpatentable over Todd. Applicant respectfully traverses this rejection. As Claims 52-57, 64-69, 78-85, 92-97, and 106-113 contain limitations similar to those recited in Claim 46-51, 58-63, 70-77, 86-91 and 98-105, Applicant respectfully submits that the above arguments apply equally well to these claims.

Additionally, Applicant respectfully submits that the examiner has not met the initial burden in providing some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985).

As submitted above, Todd does not specify how nor how often the cache gets updated. Todd's management software does not manage a cache or poll a cached asset at different frequencies depending upon the relative activity of the cached asset. There is no teaching in Todd, either expressly or impliedly, which suggests polling a cached asset at different frequencies depending upon the cached asset's activity status. Moreover, the examiner has not provided a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of Todd. The examiner has alleged that "it would have been obvious [for one of ordinary skill in the art at the time of the invention] to put Todd's program on a computer readable medium, because it would facilitate the transporting, installing and implementing of Todd's program on other systems." See Office Action, page 12, *para.* 8. One flaw in the allegation is that, even if one of ordinary skill in the art at the time of the invention would have been motivated to put Todd's program on a computer readable medium, the result (i.e., Todd's server agent software embodied on a computer readable medium) still would be for remotely controlling peripherals and would not execute to manage a cache according to embodiments of the invention as recited in Claims 46-51, 58-63, 70-77, 86-91 and 98-105, where the frequency of polling a cached asset is dependent upon that cached asset's activity status.

Accordingly, withdrawal of this rejection is respectfully requested.

Conclusion

Applicant has now made an earnest attempt to place the present application in condition for allowance. Other than as explicitly set forth above, this reply does not include any acquiescence to statements, assertions, assumptions, conclusions, or any combination thereof in the Office Action. For the foregoing reasons and for other reasons clearly apparent, favorable consideration and a Notice of Allowance of all pending claims 46-113 is respectfully solicited. The Examiner is invited to telephone the undersigned at the number listed below for discussing an Examiner's Amendment or any suggested actions for accelerating prosecution and moving the present application to allowance.

The Director of the U.S. Patent and Trademark Office is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 50-3183 of Sprinkle IP Law Group.

Respectfully submitted,

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